

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:18-cv-00319-FDW**

**THIS MATTER** is before the Court upon its own motion.

Jimmy Lowery is a prisoner of the State of North Carolina, currently incarcerated at the Foothills Correctional Institution in Morganton, North Carolina. On September 17, 2018, the United States District Court for the Eastern District of North Carolina docketed a letter from Lowery, dated September 10, 2018, as a civil rights complaint. (Doc. No. 1). On November 6, 2018, the Eastern District transferred the case to this Court, where venue is proper. (Doc. No. 5.)

The Clerk of Court for the Western District immediately notified Lowery by mail that he must either file an application to proceed without prepayment of fees and affidavit or pay the filing fee of \$400.00. (Doc. No. 6.) Lowery's complaint is deficient for another reason; that is, he has failed to submit his complaint on the form approved for use in this Court. Before the Eastern District transferred Lowery's case, it ordered him to correct these same deficiencies. (Doc. No. 2.) Upon transferring the case here, however, the Eastern District vacated that Order. (Doc. No. 4.)

Accordingly, the Court will direct the Clerk of Court to send Lowery a blank 42 U.S.C. § 1983 form authorized for use in this Court. To the extent Lowery already has completed a

similar form prescribed for use in the Eastern District, he may file that completed form here, instead.

Furthermore, the Court notes Lowery complains in a previous filing that the North Carolina Department of Public Safety (“NCDPS”) has refused to process his request for a certified copy of his inmate trust account balance for the last six months. (Doc. No. 3.) The Court hereby notifies Lowery that he is only required to file an application to proceed without prepayment of fees and affidavit (or pay the filing fee of \$400.00). Upon receipt of the application and affidavit, the Clerk of Court will request a copy of the trust account statement directly from the NCDPS.

**IT IS, THEREFORE, ORDERED** that the Clerk of Court is respectfully directed to send Lowery a blank 42 U.S.C. § 1983 form authorized for use in this Court. **IT IS FURTHER ORDERED** that Lowery shall have twenty-one (21) days from entry of this Order to file a completed 42 U.S.C. § 1983 complaint on the correct form from either the Eastern or Western District of North Carolina *and* an application to proceed without prepayment of fees and affidavit, or pay the filing fee of \$400.00.

Signed: November 13,



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Frank D. Whitney  
Chief United States District Judge

